

**Columbus Consolidated Government
Council Meeting Agenda Item**

TO:	Mayor and Councilors
AGENDA SUBJECT:	First Amendment to Environmental Services Agreement between Columbus Power Produces, Limited Liability Corporation (CPP) and Columbus Consolidated Government (CCG)
AGENDA SUMMARY:	Approval is requested to provide for an extension of specified deadlines in the Environmental Services Agreement with Columbus Power Producers to develop beneficial uses for landfill gas produced at Pine Grove and Schatulga Road Municipal Solid Waste (MSW) Landfills.
INITIATED BY:	Public Works

Recommendation: Approval is requested to provide for an extension of specified deadlines in the Environmental Services Agreement with Columbus Power Producers to develop beneficial uses for landfill gas produced at Pine Grove and Schatulga Road Municipal Solid Waste (MSW) Landfills.

Background: Effective June 30, 2017 CCG entered into an Environmental Services Agreement with CCP to investigate the possibilities for the beneficial use of existing landfill gas from Pine Grove MSW Landfill and Schatulga Road MSW Landfill. CPP, LLC is the entity owned by Enerdyne Power Systems that has been created to carry out a proposed project at MSW. CPP has completed the investigation and has found that the amount of landfill gas will be sufficient for a viable project or projects and would like to proceed with the installation of equipment necessary for extraction of landfill gas and converting it to a marketable use. However, the installation of the gas collection system and the power station cannot be completed within the time limits set forth in the original Environmental Services Agreement, and that Agreement requires any extensions of time to be approved by Council.

Historical Background: Prior this landfill gas agreement, the City entered into an agreement in 1995 which involved a series of companies that never performed and the last assignee of the agreement went bankrupt. The Deputy Public Works Director at the time was subpoenaed to appear before a bankruptcy Court in Chicago and the Court ordered that Columbus could not get out of the contract because it would violate the automatic stay. Later in 2011-12, when the company came under investigation for criminal tax fraud the New Deputy Director at the time was subpoenaed. Later previous rights to the landfill gas at Schatulga Rd Landfill reverted to CCG due to the passage of time. Since then, CCG has proceeded with the highest level of caution to avoid the mistakes of the past. The 2017 Agreement with CCP, LLC had strict termination deadlines to keep the company performing, and it is the staff's belief that the requested extension is reasonable and in the best interest of the CCG.

Analysis: The Agreement will continue for 20 years after the date of the operational delivery of the first Landfill Gas for Beneficial Use. However, there are two specific obligations which CPP is undertaking in return for the extension. 1) It will have a letter of commitment to fund the project by December 31, 2020; and 2) it will complete the construction of a gas collection system, the power plant, and commence the production of marketable product by June 30, 2022.

Projected Annual Fiscal Impact Statement: CPP will remain responsible for the costs of all necessary project development. CPP will share revenue from power production with CCG on the same basis as provided in the original Environmental Services Agreement. It is actually anticipated that the end product now expected to be produced will generate a higher percentage of revenue to be shared with the CCG.

Legal Considerations: The First Amendment has been reviewed and approved as to form by the City Attorney.

Recommended /Actions: Authorize the City Manager to execute the First Amendment to the Environmental Services Agreement with Columbus Power Producers to develop beneficial uses for landfill gas produced at Pine Grove and Schatulga Road Municipal Solid Waste (MSW) Landfills.

**A RESOLUTION
NO. _____**

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH COLUMBUS POWER PRODUCERS TO DEVELOP BENEFICIAL USES FOR LANDFILL GAS AT PINE GROVE AND SCHATULGA ROAD MUNICIPAL SOLID WASTE (MSW) LANDFILLS.

WHEREAS, The Columbus Consolidated Government (CCG) desires to use the landfill gas produced by Schatulga Road and Pine Grove Municipal Solid Waste Landfills in a beneficial way which would both be environmentally friendly as well as generate revenue for the Integrated Waste Fund; and,

WHEREAS, landfill gas is a greenhouse gas which is regulated by the Georgia Environmental Protection Division and as a regulated must be either used or destroyed to prevent or limit harm to the environment; and,

WHEREAS, effective June 30, CCG entered into an Environmental Services Agreement with Columbus Power Producers (CPP) to create a beneficial use for landfill gas as a fuel CPP agreed to develop this beneficial use at no cost to the Columbus Consolidated Government (CCG) within certain specified time deadlines; and,

WHEREAS, CPP has requested an extension of certain time deadlines specified in the Agreement and has a specific proposed beneficial use and which has the potential to increase the revenue shared with CCG from such beneficial use; and,

WHEREAS, it is to the CCG's advantage to continue with the Agreement to develop a landfill gas extraction system and seek a market for the beneficial use of the gas.

NOW, THEREFORE, THE COUNCIL OF COLUMBUS, GEORGIA, HEREBY RESOLVES AS FOLLOWS:

The City Manager is authorized to execute the attached First Amendment to Environmental Services Agreement, with Columbus Power Producers, LLC for the development of a landfill gas extraction system and beneficial use of said landfill gas.

Introduced at a regular meeting of the Council of Columbus, Georgia, held the 16th day of June 2020, and adopted at said meeting by the affirmative vote of _____ members of Council.

Councilor Allen voting	_____.
Councilor Barnes voting	_____.
Councilor Crabb voting	_____.
Councilor Davis voting	_____.
Councilor Garrett voting	_____.
Councilor House voting	_____.
Councilor Huff voting	_____.
Councilor Thomas voting	_____.
Councilor Thompson voting	_____.
Councilor Woodson voting	_____.

Sandra T. Davis, Clerk of Council

B. H. "Skip" Henderson III, Mayor

**FIRST AMENDMENT TO
ENVIRONMENTAL SERVICES AGREEMENT**

This FIRST AMENDMENT TO ENVIRONMENTAL SERVICES AGREEMENT (this "Amendment") is effective as of the ____ day of _____ 2020, by and between the **COLUMBUS GEORGIA, a CONSOLIDATED GOVERNMENT** ("Landfill Owner"), and **COLUMBUS POWER PRODUCERS, LLC**, a North Carolina limited liability company ("CPP, LLC"), each of whom may be referred to as a "Party", and collectively as the "Parties".

RECITALS

WHEREAS, Landfill Owner and CPP, LLC entered into that certain Environmental Services Agreement effective as of June 30, 2017 (the "Agreement"), whereby CPP, LLC agreed to perform certain environmental services and make certain payments to Landfill Owner and Landfill Owner agreed to transfer to CPP, LLC certain assets, including gas rights; and

WHEREAS, CPP, LLC and Landfill Owner wish to amend the Agreement to more specifically to provide for an extension of the Commencement Date; and

WHEREAS, Section 16.8 of the Agreement requires that any modification of the Agreement shall be by a written instrument and signed by both Parties.

NOW, THEREFORE, the Parties hereby agree as follows:

Agreement

Section 1. Amendment to Article 1. The Agreement is amended by adding the following as new Section 1.48:

1.48 Third Party Purchaser. A purchaser of a product or Incentive produced by the

Project who is not a Party or an Affiliate of a Party.

Section 2. Amendment to Article 6. The Agreement is hereby amended by replacing Article 6 with the following:

ARTICLE 6

Term

Subject to the other provisions contained herein, this Agreement shall become effective on the date of execution, June 30, 2017 (“Effective Date”) and shall continue in effect until the date twenty (20) years following the date of CPP, LLC’s first operational delivery of Landfill Gas for Beneficial Use to a Third Party Purchaser (“Commencement Date”). No later than 180 days prior to expiration of this Agreement, the Parties may negotiate an extension of the terms of this Agreement which shall be in writing and approved by the Columbus Council.

Section 3. Amendment to Section 11.4. The Agreement is hereby amended by replacing Section 11.4 with the following:

11.4 Termination by Landfill Owner. In the event that any of the following events occur, Landfill Owner may terminate this agreement:

- a. A Collection System as described by Section 2.1(a) above is not installed within five (5) years of the Effective Date.
- b. A Power Plant as described by Section 2.1(b) above is not installed within five (5) years of the Effective Date.
- c. The Commencement Date does not occur within five (5) years of the Effective Date.
- d. CPP, LLC has not executed a binding agreement with a Third Party Purchaser for the purchase of products or Incentives produced by the Project by December 31, 2020.

Section 4. Effect on Other Provisions. Except as amended by this Amendment, all other language and provisions in the Agreement shall remain in full force and effect and are not modified by this Amendment.

Section 5. Counterparts. This Amendment may be executed in one or more counterparts, and each such counterpart shall have the effect of an original agreement.

Section 6. Invalidity. Should any portion of this Amendment for any reason be declared by any court of competent jurisdiction to be invalid, such decisions shall not affect the validity of any remaining portion, which remaining portions shall continue in full force and effect as if this Amendment had been executed with the invalid portions thereof eliminated. The intention of the Parties hereto is that they would have executed the remaining portion of this Amendment without including any such part, parts, or portion which may for any reason be hereafter declared invalid.

Section 7. Modification. This Amendment shall not be modified, changed, or altered in any respect except by a written instrument signed by the Parties hereto.

Section 8. Headings, Etc. The headings of the sections of this Amendment are inserted for convenience only and shall not be deemed to constitute a part hereof, and shall not be binding in any construction of the provisions of this Amendment.

Section 9. Mutual Drafting. CCP, LLC and Landfill Owner acknowledge and agree that each of them has participated in the drafting of this Amendment, and, therefore, no provisions shall be construed against a Party as the drafter of this Amendment.

Section 10. Binding on Assigns. This Amendment shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

Section 11. Capitalized Terms. All capitalized terms used, but not defined, herein shall have the same meanings ascribed to such terms in the Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the Parties hereto signed and sealed, or caused its duly authorized officers to execute this Amendment, all as of the day and year first above written.

COLUMBUS POWER PRODUCERS, LLC

By: _____

William P. Brinker, Manager

COLUMBUS
GOVERNMENT

CONSOLIDATED

By: _____

Date: _____